



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2013 REGULAR SESSION

HOUSE BILL NO. 217

WEDNESDAY, FEBRUARY 27, 2013

The following bill was reported to the Senate from the House and ordered to be printed.

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adkins

1 AN ACT relating to controlled substances and declaring an emergency.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔Section 1. KRS 218A.172 is amended to read as follows:

4 (1) Administrative regulations promulgated under subsection (3) of Section 4 of this
 5 Act shall require that, prior to the initial prescribing or dispensing of any Schedule
 6 II controlled substance or a Schedule III controlled substance containing
 7 hydrocodone to a human patient, a practitioner shall:

8 (a) Obtain a~~complete~~ medical history and conduct a physical or mental health
 9 examination of the patient, as appropriate to the patient's medical complaint,
 10 and document the information in the patient's medical record;

11 (b) Query the electronic monitoring system established in KRS 218A.202 for all
 12 available data on the patient for the twelve (12) month period immediately
 13 preceding the patient encounter and appropriately utilize that data in the
 14 evaluation and treatment of the patient;

15 (c) Make a written~~treatment~~ plan stating the objectives of the treatment and
 16 further diagnostic examinations required;

17 (d) Discuss the risks and benefits of the use of controlled substances with the
 18 patient, the patient's parent if the patient is an unemancipated minor child, or
 19 the patient's legal guardian or health care surrogate, including the risk of
 20 tolerance and drug dependence; and

21 (e) Obtain written consent for the treatment.

22 (2) (a) Administrative regulations promulgated under subsection (3) of Section 4 of
 23 this Act shall require that a~~the~~ practitioner prescribing or dispensing
 24 additional amounts of Schedule II controlled substances or Schedule III
 25 controlled substances containing hydrocodone for the same medical
 26 complaint and related symptoms shall:

27 1. Review~~conduct~~, at reasonable intervals based on the patient's

1 individual circumstances ~~and~~~~[-the]~~ course of treatment, the plan of
 2 care~~[-and]~~

3 2. Provide to the patient any new information about the treatment; and

4 3. Modify or terminate the treatment as appropriate.

5 (b) If the course of treatment extends beyond three (3) months, the
 6 administrative regulations shall also require that the practitioner~~[- shall~~
 7 ~~include the practitioner querying]~~

8 1. Query the electronic monitoring system established in KRS 218A.202
 9 no less than once every three (3) months for all available data on the
 10 patient for the twelve (12) month period immediately preceding the
 11 query; and

12 2. Review~~[-reviewing]~~ that data before issuing any new prescription or
 13 refills for the patient for any Schedule II controlled substance or a
 14 Schedule III controlled substance containing hydrocodone.

15 (3) Administrative regulations promulgated under subsection (3) of Section 4 of this
 16 Act shall require that, for each patient for whom a practitioner prescribes any
 17 Schedule II controlled substance or a Schedule III controlled substance containing
 18 hydrocodone, the practitioner shall keep accurate, readily accessible, and complete
 19 medical records which include, as appropriate:

20 (a) Medical history and physical or mental health examination;

21 (b) Diagnostic, therapeutic, and laboratory results;

22 (c) Evaluations and consultations;

23 (d) Treatment objectives;

24 (e) Discussion of risk, benefits, and limitations of treatments;

25 (f) Treatments;

26 (g) Medications, including date, type, dosage, and quantity prescribed or
 27 dispensed;

- 1 (h) Instructions and agreements; and
- 2 (i) Periodic reviews of the patient's file.
- 3 (4) Administrative regulations promulgated under subsection (3) of Section 4 of this
- 4 Act may exempt, in whole or in part, compliance with the mandatory diagnostic,
- 5 treatment, review, and other protocols and standards established in this section
- 6 for~~[This section shall not apply to]~~:
- 7 (a) A licensee prescribing or administering a controlled substance~~[or anesthesia]~~
- 8 immediately prior to~~[or]~~ during, or within the fourteen (14) days following
- 9 an operative or invasive procedure or a delivery if the prescribing or
- 10 administering is medically related to the operative or invasive procedure or
- 11 the delivery and the medication usage does not extend beyond the fourteen
- 12 (14) days~~[surgery]~~;
- 13 (b) A licensee prescribing or administering a controlled substance necessary to
- 14 treat a patient in an emergency situation~~]~~:
- 15 1. ~~At the scene of an emergency;~~
- 16 2. ~~In a licensed ground or air ambulance; or~~
- 17 3. ~~In the emergency department or intensive care unit of a licensed~~
- 18 ~~hospital]~~;
- 19 (c) A licensed pharmacist or other person licensed by the Kentucky Board of
- 20 Pharmacy to dispense drugs or~~[to]~~ a licensed pharmacy;
- 21 (d) A licensee prescribing or dispensing a controlled substance;
- 22 1. For administration in a hospital or long-term-care facility if the
- 23 hospital or long-term-care facility with an institutional account, or a
- 24 practitioner in those hospitals or facilities where no institutional
- 25 account exists, queries the electronic monitoring system established in
- 26 Section 3 of this Act for all available data on the patient or resident for
- 27 the twelve (12) month period immediately preceding the query within

twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;

3. For the treatment of pain associated with cancer or with the treatment of cancer;

4. In a single dose to relieve the anxiety, pain, or discomfort experienced by a patient submitting to a diagnostic test or procedure;

5. Within seven (7) days of an initial prescribing or dispensing under subsection (1) of this section if the prescribing or dispensing;

a. Is done as a substitute for the initial prescribing or dispensing;

b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication;

6. Within ninety (90) days of an initial prescribing or dispensing under subsection (1) of this section if the prescribing or dispensing is done by another practitioner in the same practice or in an existing coverage arrangement, if done for the same patient for the same medical condition; or

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federalwide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections where the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health~~[for a hospice patient when functioning within the scope of a hospice program or hospice inpatient unit licensed~~

1 ~~under KRS Chapter 216B. The hospice program shall maintain a plan of~~
 2 ~~care in accordance with federal regulations~~];

3 (e) The prescribing of a Schedule III, IV, or V controlled substance by a licensed
 4 optometrist to a patient in accordance with the provisions of KRS 320.240; or

5 (f) The prescribing of a three (3) day supply of a Schedule III controlled
 6 substance following the performance of oral surgery by a dentist licensed
 7 pursuant to KRS Chapter 313.

8 (5) (a) A state licensing board promulgating administrative regulations under
 9 subsection (3) of Section 4 of this Act may promulgate an administrative
 10 regulation authorizing exemptions supplemental or in addition to those
 11 specified in subsection (4) of this section. Prior to exercising this authority,
 12 the board shall:

13 1. Notify the Kentucky Office of Drug Control Policy that it is
 14 considering a proposal to promulgate an administrative regulation
 15 authorizing exemptions supplemental or in addition to those specified
 16 in subsection (4) of this section and invite the office to participate in
 17 the board meeting at which the proposal will be considered;

18 2. Make a factual finding based on expert testimony as well as evidence
 19 or research submitted to the board that the exemption demonstrates a
 20 low risk of diversion or abuse and is supported by the dictates of good
 21 medical practice; and

22 3. Submit a report to the Governor and the Legislative Research
 23 Commission of its actions, including a detailed explanation of the
 24 factual and policy basis underlying the board's action. A copy of this
 25 report shall be provided to the regulations compiler.

26 (b) Within one (1) working day of promulgating an administrative regulation
 27 authorizing an exemption under this section, the promulgating board shall

e-mail to the Kentucky Office of Drug Control Policy:

- 1. A copy of the administrative regulation as filed, and all attachments required by KRS 13A.230(1); and*
- 2. A request from the board that the office review the administrative regulation in the same manner as would the Commission on Small Business Advocacy under KRS 11.202(1)(e), and submit its report or comments in accordance with the deadline established in KRS 13A.270(1)(c). A copy of the report or comments shall be filed with the regulations compiler.*

→ Section 2. KRS 218A.175 is amended to read as follows:

- (1) (a) As used in this section, "pain management facility" means a facility where the majority of patients of the practitioners at the facility are provided treatment for pain that includes the use of controlled substances and:
 1. The facility's primary practice component is the treatment of pain; or
 2. The facility advertises in any medium for any type of pain management services.
- (b) "Pain management facility" does not include the following:
 1. A hospital, including a critical access hospital, as defined in KRS Chapter 216, a facility owned by the hospital, or the office of a hospital-employed physician;
 2. A school, college, university, or other educational institution or program to the extent that it provides instruction to individuals preparing to practice as physicians, podiatrists, dentists, nurses, physician assistants, optometrists, or veterinarians;
 3. A hospice program or residential hospice facility licensed under KRS Chapter 216B;
 4. An ambulatory surgical center licensed under KRS Chapter 216B; or

- 1 5. A long-term-care facility as defined in KRS 216.510.
- 2 (2) Only a physician having a full and active license to practice medicine issued under
3 KRS Chapter 311 shall have an ownership or investment interest in a pain
4 management facility. Credit extended by a financial institution as defined in KRS
5 136.500 to the facility shall not be deemed an investment interest under this
6 subsection. This ownership or investment requirement shall not be enforced against
7 any pain management facility existing and operating on April 24, 2012, unless there
8 is an administrative sanction or criminal conviction relating to controlled substances
9 imposed on the facility,~~[-or]~~ any person employed by the facility, or any person
10 working at the facility as an independent contractor for an act or omission done
11 within the scope of the facility's licensure or the person's employment.
- 12 (3) Regardless of the form of facility ownership, beginning on July 20, 2012, at least
13 one (1) of the owners or an owner's designee who is a physician employed by and
14 under the supervision of the owner shall be physically present practicing medicine
15 in the facility for at least fifty percent (50%) of the time that patients are present in
16 the facility, and that physician owner or designee shall:
- 17 (a) Hold a current subspecialty certification in pain management by a member
18 board of the American Board of Medical Specialties, or hold a current
19 certificate of added qualification in pain management by the American
20 Osteopathic Association Bureau of Osteopathic Specialists;
- 21 (b) Hold a current subspecialty certification in hospice and palliative medicine by
22 a member board of the American Board of Medical Specialties, or hold a
23 current certificate of added qualification in hospice and palliative medicine by
24 the American Osteopathic Association Bureau of Osteopathic Specialists;
- 25 (c) Hold a current board certification by the American Board of Pain Medicine;
- 26 (d) Hold a current board certification by the American Board of Interventional
27 Pain Physicians;~~[-or]~~

1 (e) Have completed ~~a[an accredited residency or]~~ fellowship in pain management
 2 or an accredited residency program that included a rotation of at least five
 3 (5) months in pain management; or

4 (f) If the facility is operating under a registration filed with the Kentucky
 5 Board of Medical Licensure, have completed or hold, or be making
 6 reasonable progress toward completing or holding, a certification or
 7 training substantially equivalent to the certifications or training specified in
 8 this subsection, as authorized by the Kentucky Board of Medical Licensure
 9 by administrative regulation.

10 (4) A pain management facility shall accept private health insurance as one (1) of the
 11 facility's allowable forms of payment for goods or services provided and shall
 12 accept payment for services rendered or goods provided to a patient only from the
 13 patient or the patient's insurer, guarantor, spouse, parent, guardian, or legal
 14 custodian.

15 (5) If the pain management facility is operating under a license issued by the cabinet,
 16 the cabinet shall include and enforce the provisions of this section as additional
 17 conditions of that licensure. If the pain management facility is operating as the
 18 private office or clinic of a physician under KRS 216B.020(2), the Kentucky Board
 19 of Medical Licensure shall enforce the provisions of this section. The provisions of
 20 this subsection shall not apply to the investigation or enforcement of criminal
 21 liability.

22 (6) Any person who violates the provisions of this section shall be guilty of a Class A
 23 misdemeanor.

24 ➔Section 3. KRS 218A.202 is amended to read as follows:

25 (1) The Cabinet for Health and Family Services shall establish an electronic system for
 26 monitoring Schedules II, III, IV, and V controlled substances that are dispensed
 27 within the Commonwealth by a practitioner or pharmacist or dispensed to an

1 address within the Commonwealth by a pharmacy that has obtained a license,
 2 permit, or other authorization to operate from the Kentucky Board of Pharmacy.
 3 The cabinet may contract for the design, upgrade, or operation of this system if the
 4 contract preserves all of the rights, privileges, and protections guaranteed to
 5 Kentucky citizens under this chapter and the contract requires that all other aspects
 6 of the system be operated in conformity with the requirements of this or any other
 7 applicable state or federal law.

8 (2) A practitioner or a pharmacist authorized to prescribe or dispense controlled
 9 substances to humans shall register with the cabinet to use the system provided for
 10 in this section and shall maintain such registration continuously during the
 11 practitioner's or pharmacist's term of licensure and shall not have to pay a fee or tax
 12 specifically dedicated to the operation of the system.

13 (3) Every dispenser within the Commonwealth who is licensed, permitted, or otherwise
 14 authorized to prescribe or dispense a controlled substance to a person in
 15 Kentucky ~~[other than by the Board of Pharmacy, or any other dispenser who has~~
 16 ~~obtained a license, permit, or other authorization to operate from the Kentucky~~
 17 ~~Board of Pharmacy,]~~ shall report to the Cabinet for Health and Family Services the
 18 data required by this section ~~[as prescribed by the cabinet by administrative~~
 19 ~~regulation until July 1, 2013, at which time the report shall be filed with the cabinet~~
 20 ~~within one (1) day of the dispensing]~~, except that reporting shall not be required for:

21 (a) A drug ~~[, other than any Schedule II controlled substance or a Schedule III~~
 22 ~~controlled substance containing hydrocodone,]~~ administered directly to a
 23 patient in a hospital, a resident of a health care facility licensed under KRS
 24 Chapter 216B, a resident of a child-caring facility as defined by KRS
 25 199.011, or an individual in a jail, correctional facility, or juvenile detention
 26 facility; ~~[or]~~

27 (b) A drug, other than any Schedule II controlled substance or a Schedule III

1 controlled substance containing hydrocodone, dispensed by a practitioner at a
 2 facility licensed by the cabinet, provided that the quantity dispensed is limited
 3 to an amount adequate to treat the patient for a maximum of forty-eight (48)
 4 hours; or

5 (c) A drug administered or dispensed to a research subject enrolled in a
 6 research protocol approved by an institutional review board that has an
 7 active federalwide assurance number from the United States Department of
 8 Health and Human Services, Office for Human Research Protections where
 9 the research involves single, double, or triple blind drug administration or is
 10 additionally covered by a certificate of confidentiality from the National
 11 Institutes of Health.

12 (4) Data for each controlled substance that is dispensed shall include but not be limited
 13 to the following:

- 14 (a) Patient identifier;
- 15 (b) National drug code of the drug dispensed;
- 16 (c) Date of dispensing;
- 17 (d) Quantity dispensed;
- 18 (e) Prescriber; and
- 19 (f) Dispenser.

20 (5) The data shall be provided in the electronic format specified by the Cabinet for
 21 Health and Family Services unless a waiver has been granted by the cabinet to an
 22 individual dispenser. The cabinet shall establish acceptable error tolerance rates for
 23 data. Dispensers shall ensure that reports fall within these tolerances. Incomplete or
 24 inaccurate data shall be corrected upon notification by the cabinet if the dispenser
 25 exceeds these error tolerance rates.

26 (6) The Cabinet for Health and Family Services shall only disclose data to persons and
 27 entities authorized to receive that data under this section. Disclosure to any other

1 person or entity, including disclosure in the context of a civil action where the
2 disclosure is sought either for the purpose of discovery or for evidence, is prohibited
3 unless specifically authorized by this section. The Cabinet for Health and Family
4 Services shall be authorized to provide data to:

5 (a) A designated representative of a board responsible for the licensure,
6 regulation, or discipline of practitioners, pharmacists, or other person who is
7 authorized to prescribe, administer, or dispense controlled substances and who
8 is involved in a bona fide specific investigation involving a designated person;

9 (b) Employees of the Office of the Inspector General of the Cabinet for Health
10 and Family Services who have successfully completed training for the
11 electronic system and who have been approved to use the system, Kentucky
12 Commonwealth's attorneys and assistant Commonwealth's attorneys, county
13 attorneys and assistant county attorneys, a peace officer certified pursuant to
14 KRS 15.380 to 15.404, a certified or full-time peace officer of another state,
15 or a federal peace officer whose duty is to enforce the laws of this
16 Commonwealth, of another state, or of the United States relating to drugs and
17 who is engaged in a bona fide specific investigation involving a designated
18 person;

19 (c) A state-operated Medicaid program in conformity with subsection (7) of this
20 section;

21 (d) A properly convened grand jury pursuant to a subpoena properly issued for the
22 records;

23 (e) A practitioner or pharmacist, or employee of the practitioner's or pharmacist's
24 practice acting under the specific direction of the practitioner or pharmacist,
25 who requests information and certifies that the requested information is for the
26 purpose of:

27 1. Providing medical or pharmaceutical treatment to a bona fide current or

1 prospective patient; or

- 2 2. Reviewing and assessing the individual prescribing or dispensing
- 3 patterns of the practitioner or pharmacist or to determine the accuracy
- 4 and completeness of information contained in the monitoring system;

5 (f) The chief medical officer of a hospital or long-term-care facility, an
 6 employee of the hospital or long-term-care facility as designated by the chief
 7 medical officer and who is working under his or her specific direction, or a
 8 physician designee if the hospital or facility has no chief medical officer, if
 9 the officer, employee, or designee certifies that the requested information is
 10 for the purpose of providing medical or pharmaceutical treatment to a bona
 11 fide current or prospective patient or resident in the hospital or facility;

12 (g) In addition to the purposes authorized under paragraph (a) of this subsection,
 13 the Kentucky Board of Medical Licensure, for any physician who is:

- 14 1. Associated in a partnership or other business entity with a physician who
- 15 is already under investigation by the Board of Medical Licensure for
- 16 improper prescribing or dispensing practices;
- 17 2. In a designated geographic area for which a trend report indicates a
- 18 substantial likelihood that inappropriate prescribing or dispensing may
- 19 be occurring; or
- 20 3. In a designated geographic area for which a report on another physician
- 21 in that area indicates a substantial likelihood that inappropriate
- 22 prescribing or dispensing may be occurring in that area;

23 ~~(h)~~~~(g)~~ In addition to the purposes authorized under paragraph (a) of this
 24 subsection, the Kentucky Board of Nursing, for any advanced practice
 25 registered nurse who is:

- 26 1. Associated in a partnership or other business entity with a physician who
- 27 is already under investigation by the Kentucky Board of Medical

- 1 Licensure for improper prescribing or dispensing practices;
- 2 2. Associated in a partnership or other business entity with an advanced
- 3 practice registered nurse who is already under investigation by the Board
- 4 of Nursing for improper prescribing practices;
- 5 3. In a designated geographic area for which a trend report indicates a
- 6 substantial likelihood that inappropriate prescribing or dispensing may
- 7 be occurring; or
- 8 4. In a designated geographic area for which a report on a physician or
- 9 another advanced practice registered nurse in that area indicates a
- 10 substantial likelihood that inappropriate prescribing or dispensing may
- 11 be occurring in that area; ~~or~~

12 ~~(i)(h)~~ A judge or a probation or parole officer administering a diversion or
 13 probation program of a criminal defendant arising out of a violation of this
 14 chapter or of a criminal defendant who is documented by the court as a
 15 substance abuser who is eligible to participate in a court-ordered drug
 16 diversion or probation program; or

17 (i) A medical examiner engaged in a death investigation pursuant to KRS
 18 72.026.

19 (7) The Department for Medicaid Services shall use any data or reports from the system
 20 for the purpose of identifying Medicaid providers or recipients whose prescribing,
 21 dispensing, or usage of controlled substances may be:

22 (a) Appropriately managed by a single outpatient pharmacy or primary care
 23 physician; or

24 (b) Indicative of improper, inappropriate, or illegal prescribing or dispensing
 25 practices by a practitioner or drug seeking by a Medicaid recipient.

26 (8) A person who receives data or any report of the system from the cabinet shall not
 27 provide it to any other person or entity except as provided in this section, in another

1 statute, or by order of a court of competent jurisdiction and only to a person or
2 entity authorized to receive the data or the report under this section, except that:

3 (a) A person specified in subsection (6)(b) of this section who is authorized to
4 receive data or a report may share that information with any other persons
5 specified in subsection (6)(b) of this section authorized to receive data or a
6 report if the persons specified in subsection (6)(b) of this section are working
7 on a bona fide specific investigation involving a designated person. Both the
8 person providing and the person receiving the data or report under this
9 paragraph shall document in writing each person to whom the data or report
10 has been given or received and the day, month, and year that the data or report
11 has been given or received. This document shall be maintained in a file by
12 each agency engaged in the investigation;

13 (b) A representative of the Department for Medicaid Services may share data or
14 reports regarding overutilization by Medicaid recipients with a board
15 designated in subsection (6)(a) of this section, or with a law enforcement
16 officer designated in subsection (6)(b) of this section;

17 (c) The Department for Medicaid Services may submit the data as evidence in an
18 administrative hearing held in accordance with KRS Chapter 13B;~~[-and-]~~

19 (d) If a state licensing board as defined in Section 4 of this Act initiates formal
20 disciplinary proceedings against a licensee, and data obtained by the board
21 is relevant to the charges, the board may provide the data to the licensee and
22 his or her counsel, as part of the notice process required by KRS 13B.050,
23 and admit the data as evidence in an administrative hearing conducted
24 pursuant to KRS Chapter 13B, with the board and licensee taking all
25 necessary steps to prevent further disclosure of the data; and

26 (e) A practitioner, pharmacist, or employee who obtains data under subsection
27 (6)(e) of this section may share the report with the patient or person authorized

1 to act on the patient's behalf and place the report in the patient's medical
2 record, with that individual report then being deemed a medical record subject
3 to disclosure on the same terms and conditions as an ordinary medical record
4 in lieu of the disclosure restrictions otherwise imposed by this section.

5 (9) The Cabinet for Health and Family Services, all peace officers specified in
6 subsection (6)(b) of this section, all officers of the court, and all regulatory agencies
7 and officers, in using the data for investigative or prosecution purposes, shall
8 consider the nature of the prescriber's and dispenser's practice and the condition for
9 which the patient is being treated.

10 (10) The data and any report obtained therefrom shall not be a public record, except that
11 the Department for Medicaid Services may submit the data as evidence in an
12 administrative hearing held in accordance with KRS Chapter 13B.

13 (11) Intentional failure by a dispenser to transmit data to the cabinet as required by
14 subsection (3), (4), or (5) of this section shall be a Class B misdemeanor for the first
15 offense and a Class A misdemeanor for each subsequent offense.

16 (12) Intentional disclosure of transmitted data to a person not authorized by subsection
17 (6) to subsection (8) of this section or authorized by KRS 315.121, or obtaining
18 information under this section not relating to a bona fide specific investigation, shall
19 be a Class B misdemeanor for the first offense and a Class A misdemeanor for each
20 subsequent offense.

21 (13) (a) The Commonwealth Office of Technology, in consultation with the Cabinet
22 for Health and Family Services, may submit an application to the United
23 States Department of Justice for a drug diversion grant to fund a pilot or
24 continuing project to study, create, or maintain a real-time electronic
25 monitoring system for Schedules II, III, IV, and V controlled substances.

26 (b) The pilot project shall:

27 1. Be conducted in two (2) rural counties that have an interactive real-time

1 electronic information system in place for monitoring patient utilization
2 of health and social services through a federally funded community
3 access program; and

4 2. Study the use of an interactive system that includes a relational data base
5 with query capability.

6 (c) Funding to create or maintain a real-time electronic monitoring system for
7 Schedules II, III, IV, and V controlled substances may be sought for a
8 statewide system or for a system covering any geographic portion or portions
9 of the state.

10 (14) Provisions in this section that relate to data collection, disclosure, access, and
11 penalties shall apply to the pilot project authorized under subsection (13) of this
12 section.

13 (15) The Cabinet for Health and Family Services may, by promulgating an
14 administrative regulation, limit the length of time that data remain in the electronic
15 system. Any data removed from the system shall be archived and subject to retrieval
16 within a reasonable time after a request from a person authorized to review data
17 under this section.

18 (16) (a) The Cabinet for Health and Family Services shall work with each board
19 responsible for the licensure, regulation, or discipline of practitioners,
20 pharmacists, or other persons who are authorized to prescribe, administer, or
21 dispense controlled substances for the development of a continuing education
22 program about the purposes and uses of the electronic system for monitoring
23 established in this section.

24 (b) The cabinet shall work with the Kentucky Bar Association for the
25 development of a continuing education program for attorneys about the
26 purposes and uses of the electronic system for monitoring established in this
27 section.

1 (c) The cabinet shall work with the Justice and Public Safety Cabinet for the
 2 development of a continuing education program for law enforcement officers
 3 about the purposes and uses of the electronic system for monitoring
 4 established in this section.

5 (17) If the cabinet becomes aware of a prescriber's or dispenser's failure to comply with
 6 this section, the cabinet shall notify the licensing board or agency responsible for
 7 licensing the prescriber or dispenser. The licensing board shall treat the notification
 8 as a complaint against the licensee.

9 (18) The cabinet shall promulgate administrative regulations to implement the provisions
 10 of this section. Included in these administrative regulations shall be:

11 (a) An error resolution process allowing a patient to whom a report had been
 12 disclosed under subsection (8) of this section to request the correction of
 13 inaccurate information contained in the system relating to that patient; and

14 (b) Beginning July 1, 2013, a requirement that data be reported to the system
 15 under subsection (3) of this section within one (1) day of dispensing.

16 ➔Section 4. KRS 218A.205 is amended to read as follows:

17 (1) As used in this section:

18 (a) "Reporting agency" includes:

- 19 1. The Department of Kentucky State Police;
- 20 2. The Office of the Attorney General;
- 21 3. The Cabinet for Health and Family Services; and
- 22 4. The applicable state licensing board; and

23 (b) "State licensing board" means:

- 24 1. The Kentucky Board of Medical Licensure;
- 25 2. The Kentucky Board of Nursing;
- 26 3. The Kentucky Board of Dentistry;
- 27 4. The Kentucky Board of Optometric Examiners;

- 1 5. The State Board of Podiatry; and
- 2 6. Any other board that licenses or regulates a person who is entitled to
- 3 prescribe or dispense controlled substances to humans.
- 4 (2) (a) When a reporting agency or a law enforcement agency receives a report of
- 5 improper, inappropriate, or illegal prescribing or dispensing of a controlled
- 6 substance it may, to the extent otherwise allowed by law, send a copy of the
- 7 report within three (3) business days to every other reporting agency.
- 8 (b) A county attorney or Commonwealth's attorney shall notify the Office of the
- 9 Attorney General and the appropriate state licensing board within three (3)
- 10 business days of an indictment or a waiver of indictment becoming public in
- 11 his or her jurisdiction charging a licensed person with a felony offense relating
- 12 to the manufacture of, trafficking in, prescribing, dispensing, or possession of
- 13 a controlled substance.
- 14 (3) Each state licensing board shall~~[by September 1, 2012,]~~ establish the following by
- 15 administrative regulation for those licensees authorized to prescribe or dispense
- 16 controlled substances:
- 17 (a) Mandatory prescribing and dispensing standards related to controlled
- 18 substances, the requirements of which shall include the diagnostic,
- 19 treatment, review, and other protocols and standards established for
- 20 Schedule II controlled substances and Schedule III controlled substances
- 21 containing hydrocodone under Section 1 of this Act and which may include
- 22 the exemptions authorized by subsection (4) of Section 1 of this Act;
- 23 (b) A prohibition on a practitioner dispensing greater than a forty-eight (48) hour
- 24 supply of any Schedule II controlled substance or a Schedule III controlled
- 25 substance containing hydrocodone unless the dispensing is done as part of a
- 26 narcotic treatment program licensed by the Cabinet for Health and Family
- 27 Services;

- 1 (c) A procedure for temporarily suspending, limiting, or restricting a license held
2 by a named licensee where a substantial likelihood exists to believe that the
3 continued unrestricted practice by the named licensee would constitute a
4 danger to the health, welfare, or safety of the licensee's patients or of the
5 general public;
- 6 (d) A procedure for the expedited review of complaints filed against their
7 licensees pertaining to the improper, inappropriate, or illegal prescribing or
8 dispensing of controlled substances that is designed to commence an
9 investigation within seven (7) days of a complaint being filed and produce a
10 charging decision by the board on the complaint within one hundred twenty
11 (120) days of the receipt of the complaint, unless an extension for a definite
12 period of time is requested by a law enforcement agency due to an ongoing
13 criminal investigation;
- 14 (e) The establishment and enforcement of licensure standards that conform to the
15 following:
- 16 1. A permanent ban on licensees and applicants convicted after July 20,
17 2012, in this state or any other state of any felony offense relating to
18 controlled substances from prescribing or dispensing a controlled
19 substance;
 - 20 2. Restrictions short of a permanent ban on licensees and applicants
21 convicted in this state or any other state of any misdemeanor offense
22 relating to prescribing or dispensing a controlled substance;
 - 23 3. Restrictions mirroring in time and scope any disciplinary limitation
24 placed on a licensee or applicant by a licensing board of another state if
25 the disciplinary action results from improper, inappropriate, or illegal
26 prescribing or dispensing of controlled substances; and
 - 27 4. A requirement that licensees and applicants report to the board any

1 conviction or disciplinary action covered by this subsection with
 2 appropriate sanctions for any failure to make this required report;

3 (f) A procedure for the continuous submission of all disciplinary and other
 4 reportable information to the National Practitioner Data Bank of the United
 5 States Department of Health and Human Services;

6 (g) If not otherwise required by other law, a process for {:

7 ~~1. A process for obtaining a national and state fingerprint-supported~~
 8 ~~criminal record check conducted by the Federal Bureau of Investigation~~
 9 ~~or by the Department of Kentucky State Police on an applicant for initial~~
 10 ~~licensing; and~~

11 ~~2.]submitting a query on each applicant for licensure to the National~~
 12 ~~Practitioner Data Bank of the United States Department of Health and~~
 13 ~~Human Services to retrieve any relevant data on the applicant; and~~

14 (h) Continuing education requirements beginning with the first full educational
 15 year occurring after July 1, 2012, that specify that at least seven and one-half
 16 percent (7.5%) of the continuing education required of the licensed
 17 practitioner relate to the use of the electronic monitoring system established in
 18 KRS 218A.202, pain management, or addiction disorders.

19 (4) A state licensing board shall employ or obtain the services of a specialist in the
 20 treatment of pain and a specialist in drug addiction to evaluate information received
 21 regarding a licensee's prescribing or dispensing practices related to controlled
 22 substances if the board or its staff does not possess such expertise, to ascertain if the
 23 licensee under investigation is engaging in improper, inappropriate, or illegal
 24 practices.

25 (5) Any statute to the contrary notwithstanding, no state licensing board shall require
 26 that a grievance or complaint against a licensee relating to controlled substances be
 27 sworn to or notarized, but the grievance or complaint shall identify the name and

1 address of the grievant or complainant, unless the board by administrative
 2 regulation authorizes the filing of anonymous complaints. Any such authorizing
 3 administrative regulation shall require that an anonymous complaint or grievance be
 4 accompanied by sufficient corroborating evidence as would allow the board to
 5 believe, based upon a totality of the circumstances, that a reasonable probability
 6 exists that the complaint or grievance is meritorious.

- 7 (6) Every state licensing board shall cooperate to the maximum extent permitted by law
 8 with all state, local, and federal law enforcement agencies, and all professional
 9 licensing boards and agencies, state and federal, in the United States or its territories
 10 in the coordination of actions to deter the improper, inappropriate, or illegal
 11 prescribing or dispensing of a controlled substance.

12 (7) Each state licensing board shall require a fingerprint-supported criminal record
 13 check by the Department of Kentucky State Police and the Federal Bureau of
 14 Investigation of any applicant for initial licensure to practice any profession
 15 authorized to prescribe or dispense controlled substances.

16 ➔Section 5. KRS 315.335 is amended to read as follows:

- 17 (1) A pharmacy located in Kentucky which has a robbery or theft of a controlled
 18 substance shall~~;~~

19 ~~(a)}~~ immediately following the robbery or discovery of the theft report the incident
 20 to a law enforcement agency serving the geographic area in which the
 21 pharmacy is located~~;~~ and

22 ~~(b) Within three (3) business days report that robbery or theft to the Department~~
 23 ~~of Kentucky State Police].~~

- 24 (2) A pharmacy which has mailed or shipped a controlled substance to a location in
 25 Kentucky and learns that the mailing or shipment did not arrive shall within three

26 (3) business days report that nonreceipt to:

- 27 (a) The Department of Kentucky State Police; and

1 (b) If applicable, the United States Postal Inspection Service.
 2 (3) (a) The reports required pursuant to subsections (1) and (2) of this section shall
 3 contain at a minimum, if known and applicable:

4 ~~1.{(a)}~~ The name, National Drug Code, and quantity of each controlled
 5 substance involved;


6 ~~2.{(b)}~~ A description of the circumstances of the loss;

7 ~~3.{(c)}~~ The names and contact information of any witnesses; and

8 ~~4.{(d)}~~ The name and description of any person suspected of committing
 9 the offense or causing the loss.

10 **(b) The Board of Pharmacy may by administrative regulation authorize a**
 11 **pharmacy to submit a completed DEA 106 form or a successor form in lieu**
 12 **of the data elements required by this subsection.**

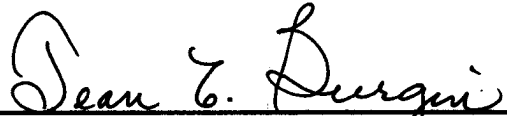
13 ➔Section 6. Whereas the epidemic of prescription drug abuse represents a clear
 14 and present danger to the lives, safety, and health of all Kentuckians and no just cause
 15 exists for delay, an emergency is declared to exist and this Act takes effect upon its
 16 passage and approval by the Governor or upon its otherwise becoming a law.



Speaker House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 3-4-13